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9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4697

12 **KEELY MARIE NEEDHAM**  
13 **18008 Clouds Rest Rd.**  
14 **Soulsbyville, CA 95372**

**ACCUSATION**

15 **Pharmacy Technician Registration No.**  
**83252**

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about May 1, 2008, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number 83252 to Keely Marie Needham (Respondent). The Pharmacy Technician  
25 Registration expired on October 31, 2011, and has not been renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws. All section references are to the  
4 Business and Professions Code unless otherwise indicated.

5 4. Section 4300 of the Code states, in pertinent part:

6 "(a) Every license issued may be suspended or revoked. . . ."

7 5. Section 4300.1 of the Code states:

8 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
9 operation of law or by order or decision of the board or a court of law, the placement of a license  
10 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
11 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
12 proceeding against, the licensee or to render a decision suspending or revoking the license."

13 **STATUTORY PROVISIONS**

14 6. Section 475 of the Code states, in pertinent part:

15 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall  
16 govern the denial of licenses on the grounds of:

17 "...

18 "(2) Conviction of a crime.

19 "(3) Commission of any act involving dishonesty, fraud or deceit with the intent to  
20 substantially benefit himself or another, or substantially injure another.

21 "(4) Commission of any act which, if done by a licentiate of the business or profession in  
22 question, would be grounds for suspension or revocation of license.

23 (b) Notwithstanding any other provisions of this code, the provisions of this division shall  
24 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)  
25 of subdivision (a). . . ."

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1           7.     Section 490 of the Code provides, in pertinent part, that a board may suspend or  
2 revoke a license on the ground that the licensee has been convicted of a crime substantially  
3 related to the qualifications, functions, or duties of the business or profession for which the  
4 license was issued.

5           8.     Section 492 of the Code states:

6           “Notwithstanding any other provision of law, successful completion of any diversion  
7 program under the Penal Code, or successful completion of an alcohol and drug problem  
8 assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of  
9 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
10 (commencing with Section 500) of this code, or any initiative act referred to in that division, from  
11 taking disciplinary action against a licensee or from denying a license for professional  
12 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record  
13 pertaining to an arrest.

14           This section shall not be construed to apply to any drug diversion program operated by any  
15 agency established under Division 2 (commencing with Section 500) of this code, or any  
16 initiative act referred to in that division.”

17           9.     Section 4022 of the Code states, in pertinent part:

18           “Dangerous drug” or “dangerous device” means any drug or device unsafe for self use in  
19 humans or animals. . . .”

20           10.    Section 4060 of the Code states, in pertinent part:

21           “No person shall possess any controlled substance, except that furnished to a person upon  
22 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
23 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse  
24 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
25 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
26 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
27 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
28 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,

1 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
2 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
3 labeled with the name and address of the supplier or producer. . . .”

4 11. Section 4301 of the Code states, in pertinent part:

5 "The board shall take action against any holder of a license who is guilty of unprofessional  
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 "(a) Gross immorality.

9 "...

10 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
11 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
12 whether the act is a felony or misdemeanor or not.

13 "...

14 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
15 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
16 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
17 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
18 practice authorized by the license.

19 "...

20 "(j) The violation of any of the statutes of this state, or any other state, or of the United  
21 States regulating controlled substances and dangerous drugs.

22 "...

23 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
26 substances or of a violation of the statutes of this state regulating controlled substances or  
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order  
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
6 of this provision. The board may take action when the time for appeal has elapsed, or the  
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
11 indictment.

12 "...

13 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
14 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
15 federal and state laws and regulations governing pharmacy, including regulations established by  
16 the board or by any other state or federal regulatory agency.

17 (p) Actions or conduct that would have warranted denial of a license. . . ."

#### 18 **REGULATION**

19 12. California Code of Regulations, title 16, section 1770, states:

20 "For the purpose of denial, suspension, or revocation of a personal or facility license  
21 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
22 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
23 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
24 licensee or registrant to perform the functions authorized by his license or registration in a manner  
25 consistent with the public health, safety, or welfare."

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1 **COST RECOVERY**

2 13. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct—Conviction of a Crime Substantially Related to Qualifications,  
8 Functions, and Duties of Licensee)**

9 14. Respondent is subject to disciplinary action under sections 475, 490, and 4301(l) of  
10 the Code in that Respondent has been convicted of a crime that is substantially related to her  
11 qualifications, functions, and duties as a pharmacy technician. The facts and circumstances of  
12 this conviction are as follows:

13 15. On or about May 27, 2011, in *People v. Keely Marie Needham*, Superior Court of  
14 California, County of Fresno, case no. F11902809, Respondent pled nolo contendere to a  
15 misdemeanor charge of second degree commercial burglary (a violation of Penal Code sections  
16 459 and 560). The facts and circumstances of this conviction are as follows:

17 a. On April 28, 2011, a Clovis Police Department officer received a report from a Target  
18 Loss Prevention Officer that Respondent and her fiancé were stealing merchandise from the store.  
19 Once the officer arrived at the store, he arrested Respondent and her fiancé as they exited the  
20 store. The officer recovered merchandise valued at approximately \$445.35 from Respondent.  
21 Respondent stated to the officer that while in the store, she selected items to steal, placed them in  
22 her purse, and then went into the women's restroom where she used her fiancé's pocket knife to  
23 cut open packages and remove security tags. After removing all of the security tags, Respondent  
24 concealed the items in her purse, and she and her fiancé exited the store. Respondent admitted  
25 that she and her fiancé intended to sell the stolen merchandise, and that she and her fiancé were  
26 willing participants in the crime.

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**SECOND CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct—Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

16. Respondent is subject to disciplinary action under section 4301(f) of the Code in that on April 28, 2011, Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth in more particularity in paragraph 15(a).

**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct—Possession of a Controlled Substance)**

17. Respondent is subject to disciplinary action under sections 4060 and 4301(j) of the Code in that on April 19, 2011, Respondent possessed a controlled substance (heroin) in violation of California Health and Safety Code section 11364. The facts and circumstances are as follows:

18. On or about May 6, 2011, in *People v. Keely Marie Needham*, Superior Court of California, County of Tuolumne, case no. CRF35238, Respondent pled guilty to: (1) a felony charge of possession of a controlled substance (a violation of California Health and Safety Code section 11350(a)); (2) a misdemeanor charge of possession of a smoking device (a violation of Health and Safety Code section 11364); and (3) a misdemeanor charge of being under the influence of a controlled substance (a violation of Health and Safety Code section 11550(a)). The court granted a deferred entry of judgment, and the case was dismissed upon completion of the deferred entry of judgment on December 17, 2012. The facts and circumstances are as follows:

a. On April 19, 2011, two Tuolumne County Sherriff deputies conducted a traffic stop of a vehicle in which Respondent was a passenger. While interacting with the driver and Respondent, one of the deputies believed both were under the influence of a controlled substance based upon their slow speech and movements, and constricted pupils. After the driver gave the deputy permission to search the vehicle, the deputy discovered two pieces of foil with burn marks and residue on the passenger side floor board, and once piece of foil inside Respondent's purse. The deputy also discovered a plastic bag with what appeared to be a piece of tar heroin on it next to a toot straw with brown residue under the passenger front seat. One of the deputies placed the driver, Respondent, and the other two passengers in handcuffs. After the deputy placed

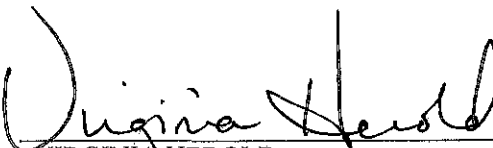
1 Respondent in handcuffs, Respondent admitted that she used Methadone on April 18, 2011.  
2 While changing handcuffs on Respondent, one of the deputies discovered five pieces of crumpled  
3 foil in Respondent's hands; one of these pieces of foil had a small amount of a dark brown  
4 substance consistent with the appearance of heroin. The deputies arrested Respondent and  
5 transported her to jail. At the jail, Respondent was searched by another deputy who discovered a  
6 piece of foil in Respondent's underwear and a toot straw, with brown residue, in Respondent's  
7 bra. One of the deputies weighed and tested the suspected heroin. The substance weighed 0.4  
8 grams and tested positive for heroin.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
11 and that following the hearing, the Board of Pharmacy issue a decision:

- 12 1. Revoking or suspending Pharmacy Technician Registration Number 83252, issued to  
13 Keely Marie Needham.;
- 14 2. Ordering Keely Marie Needham to pay the Board of Pharmacy the reasonable costs  
15 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
16 section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.
- 18
- 19

20 DATED: 9/19/13

21   
22 VIRGINIA HEROLD  
23 Executive Officer  
24 Board of Pharmacy  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant

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